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THE AMERICAN INSURANCE COMPANY

6  
7 **UNITED STATES DISTRICT COURT**  
8 **NORTHERN DISTRICT OF CALIFORNIA**  
9

10 THE AMERICAN INSURANCE  
COMPANY,

11 Plaintiff,

12 v.

13  
14 LIBERTY SURPLUS INSURANCE  
CORPORATION; and DOES 1 through  
15 50,

16 Defendants.

CASE NO: 5:11-CV-03159-LHK

*Case assigned to the San Jose Courthouse  
Courtroom 8, Honorable Lucy H. Koh*

**STIPULATION AND ORDER**

17  
18 WHEREAS plaintiff The American Insurance Company has recently discovered that  
19 Greenwich Insurance Company issued private company reimbursement insurance policies to  
20 Prometheus Real Estate Group that American believes potentially provide coverage to  
21 Prometheus and Lick Mill Creek Apartments in Santa Clara County Superior Court case no. 108  
22 CV 118002 ("the underlying action"), and thereby trigger Greenwich's duty to defend  
23 Prometheus and Lick Mill in the underlying action;

24 WHEREAS Greenwich has denied any obligation to defend Prometheus and Lick Mill in  
25 the underlying action; and

26 WHEREAS defendant Liberty Surplus Insurance Corporation has recently discovered  
27 that a number of insurers issued commercial general liability insurance policies to subcontractors  
28 involved in the construction of the Mansion Grove Apartment project that forms the basis of

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plaintiffs' claims in the underlying action. Although Liberty Surplus contends that there is no coverage for Prometheus and/or Lick Mill as additional insureds under the Commercial General Liability policy and Additional Insured Endorsement Liberty Surplus issued, if Liberty Surplus is held to provide coverage, then the subcontractors' policies will also afford coverage to Prometheus and/or Lick Mill as additional insureds for the claims asserted in the underlying action on the same basis;

IT IS HEREBY STIPULATED by and between American and Liberty Surplus that American shall have leave to file a first amended complaint adding Greenwich as a defendant. A true and correct copy of that proposed first amended complaint is attached as Exhibit A. Liberty Surplus shall have leave to file a cross-complaint adding as cross-defendants the insurers that issued commercial general liability policies to subcontractors involved in the construction of the Mansion Grove Apartment project and against Greenwich.

DATE: November 28, 2011

WILSON & ELLIN

/s/

By:

Keith A. Turner  
 Attorneys for Plaintiff  
 THE AMERICAN INSURANCE COMPANY

DATE: November 28, 2011

BURNHAM & BROWN

/s/

By:

David H. Waters  
 Attorneys for Defendant  
 LIBERTY SURPLUS INSURANCE CORPORATION

IT IS SO ORDERED

DATE: November<sup>29</sup>, 2011

*Lucy H. Koh*

Lucy H. Koh  
 UNITED STATES DISTRICT COURT JUDGE

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